



# *FIRST AMENDMENT AUDITS*

*WHAT ARE THEY AND  
HOW BEST TO RESPOND*



# **BILL WARNER AND ERIC KREBS**

## **WARNER LAW FIRM, P.A.**

FACT

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# First Amendment Auditors

- Who are they?
  - Constitutional activists?
  - Citizen journalists?
  - Modern cop-watchers?
  - Antagonists of government?
  - Internet attention-seekers?



# First Amendment Auditors

- What do they do?
  - Record government officials and employees
  - Record in or on government buildings and facilities
  - Basis for their activity?
    - Grounded in concept that the courts have recognized that there is a First Amendment right to “film public officials in public places”
  - These auditors incorrectly confuse “public buildings” with “public places”
  - They contend public places means all public property, not just streets, sidewalks, parks, etc.



# First Amendment Auditors

- What do they do?
  - Descend on your offices unannounced-often in a group
  - Initiate contact
  - Refuse to identify themselves, purpose of visit or context of what they are doing- "Just filming for a story"
  - Often belligerent and condescending-especially if they encounter any resistance
  - Interrupt, demean, threaten lawsuits if they don't get their way
  - Alarming for you if you don't know to expect it and, do not have clear simple plan for handling if and when it occurs



# First Amendment Auditors

- What's the basis for this Activity?
  - The First Amendment to the United States Constitution
  - Counties are subject to the constitutional protections contained in the Bill of Rights.
  - Concept that video recording someone is a form of speech is a little odd
  - First Amendment protects freedom of the press, which is why a lot of these auditors will refer to themselves as "citizen journalist"

# Right to Record under the First Amendment

- First Amendment allows people to gather information about what public officials do on public property, and a right to record matters of public interest
- However, the First Amendment is limited and does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired
- Governments have the power to preserve the property under its control for the use to which it is lawfully dedicated



# Right to Record under the First Amendment

- Some examples:
  - Protected: Video recording code enforcement/citizen encounters- provided you are not interfering or obstructing the officer in the performance of his duties
  - Protected: Recording public meetings subject to Florida's Sunshine Law
  - Not protected-filming within a jail or other secure area of governmental facilities
  - Not protected-filming county facilities not otherwise open to the public



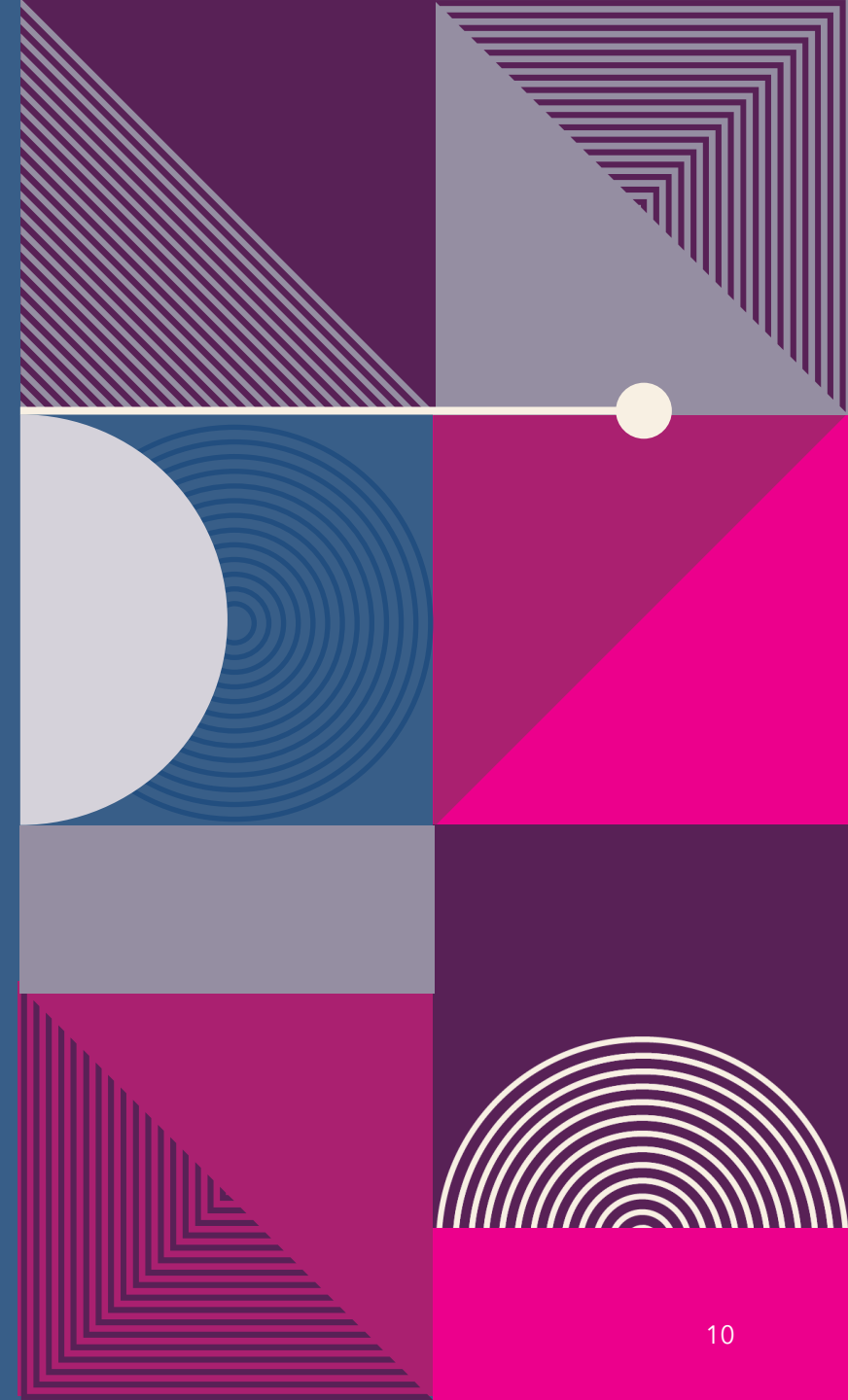


# What Restrictions on Recording are Permitted?

- Forum analysis is necessary
  - Traditional public forum
  - Designated public forum
  - Limited public forum
  - Nonpublic forum / no forum

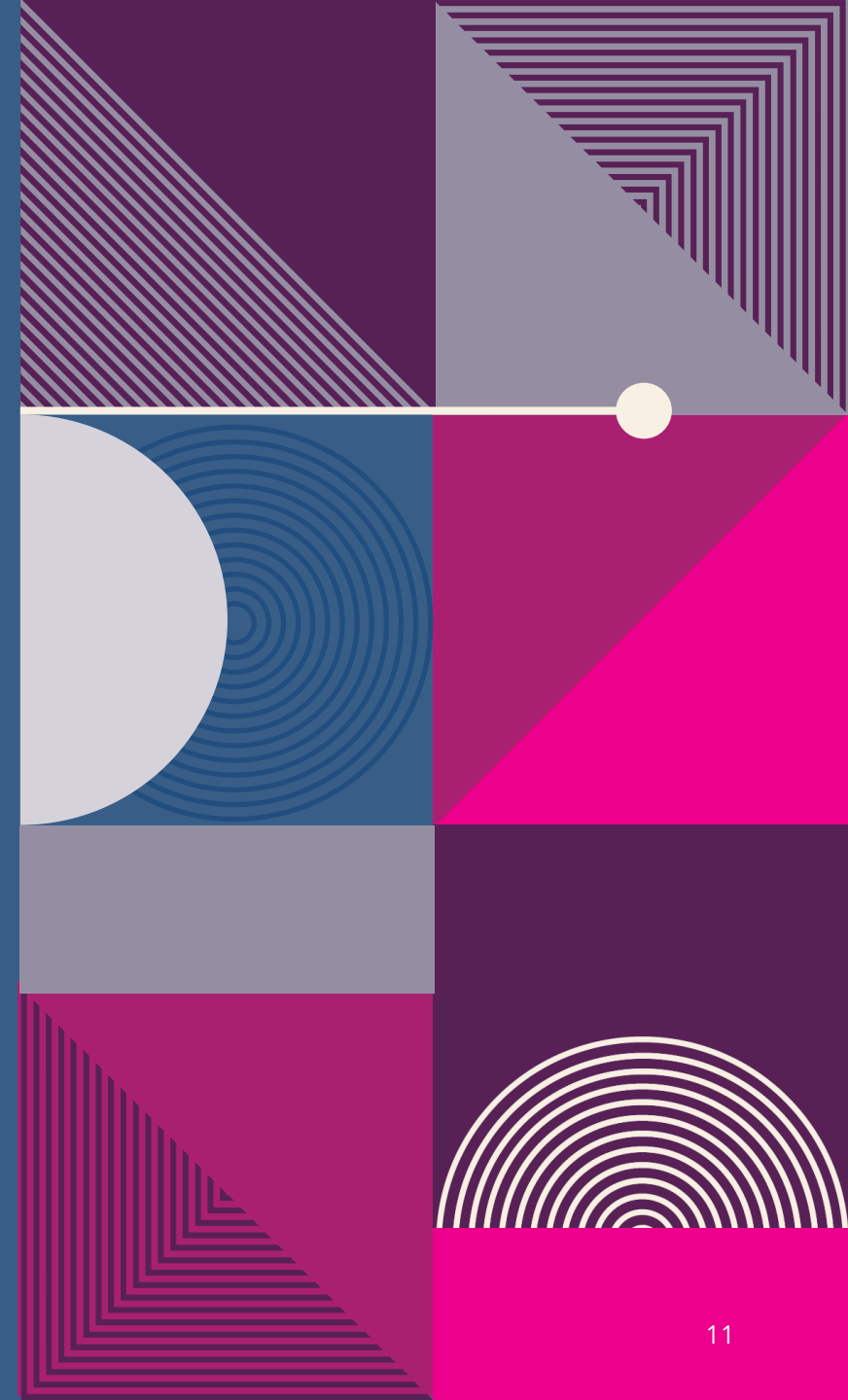
# Traditional Public Forum

- Government properties that have traditionally been held for the use of the public and have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.
- Examples: Public streets, parks, and sidewalks
- Citizen has greatest First Amendment rights in this forum
- Ability of government to regulate speech in this forum is very limited



# Traditional Public Forum

- Restrictions permitted: reasonable time, place, and manner restrictions that are:
  - Content neutral
  - Narrowly-tailored to serve a significant government interest, and
  - Leave open ample alternative channels of communication
- Note “viewpoint” restrictions are never authorized
- Can limit what subject they can talk about, but not their view on it



# Designated Public Forum

- Government property that has not traditionally been regarded as a public forum but is intentionally opened up as a forum to the public at large
- Expressive activity in a designated public forum can be limited to a particular class of speakers instead of the general public
- Example:
  - General public comment versus a limit to a particular agenda item
- Restrictions allowed: same as for traditional public forums

# Limited Public Forum

- Where a government has reserved a forum for certain groups or topics
  - Agenda Items
  - Special meetings
- Each individual member of the class must obtain permission from the governmental proprietor of the forum, who in turn has discretion to grant or deny permission
- Examples:
  - The public comment portion of meetings subject to Florida's Sunshine Law
- Restrictions allowed: content-based restrictions permitted as long as they are not viewpoint based
- Can place restrictions on amount of time to speak, relevance i.e., limited to district business, no disruptive behavior/profane speech

# Limited Public Forum

Important to note the distinction between viewpoint-discrimination and content-discrimination

If a county banned all speech about the big election- that would be considered to be content discrimination.

But if a county banned all negative comments about Politician Doe, that would be viewpoint discrimination.

While the former may be allowed in a limited public forum, the latter typically is not.

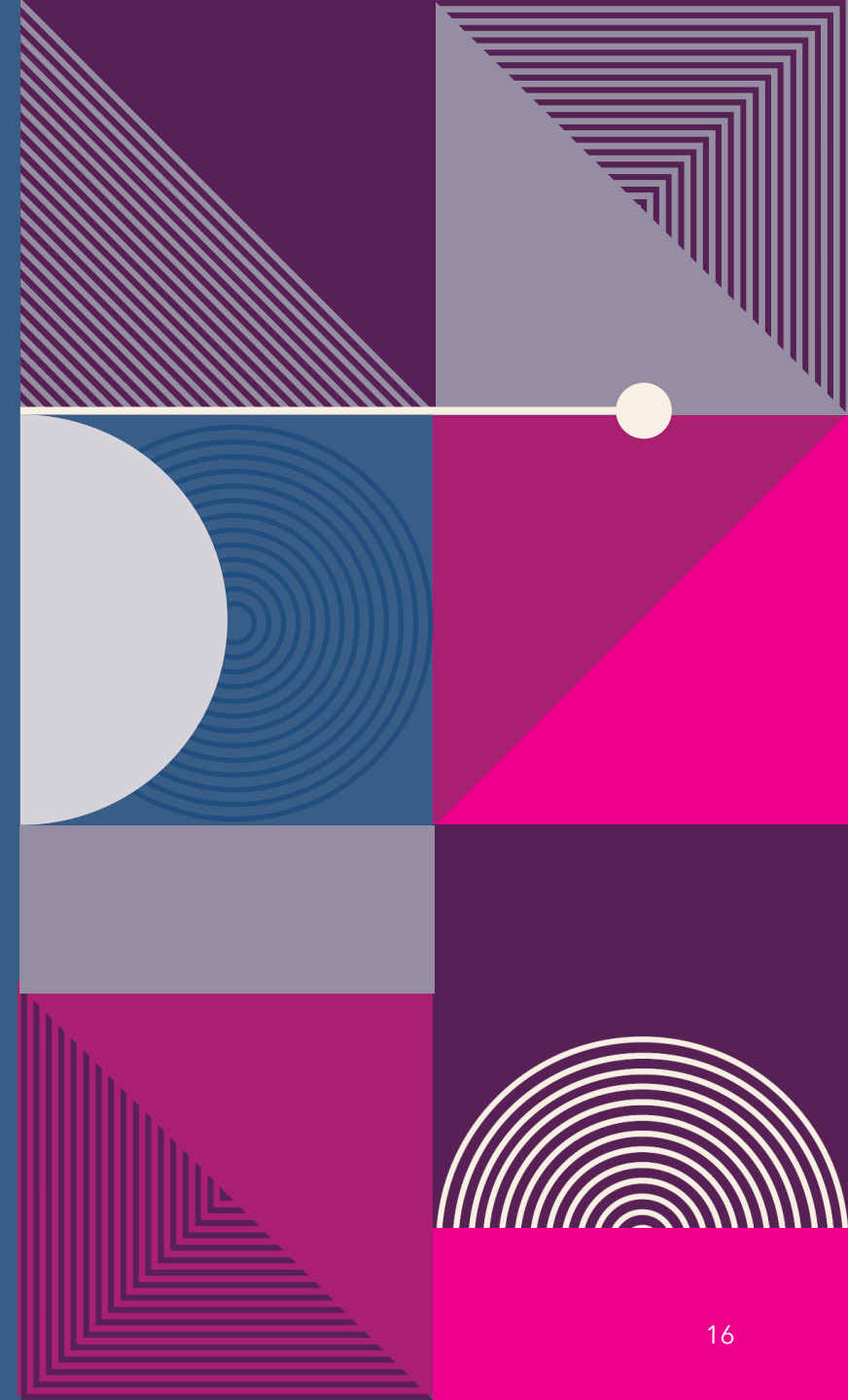
# Nonpublic Forum / No Forum

- Where the government acts as proprietor, managing internal operations
- Examples:
  - Business offices and restricted work areas for county staff
  - Bathrooms/Locker rooms
  - IT/records facilities-private, protected information
- Restrictions permitted:
  - Any unless arbitrary, capricious, invidious, or viewpoint-based



# Common Places for First Amendment Audits

- Lobby areas of government buildings: limited public forum/nonpublic forum
- Offices and workspaces for government employees: nonpublic forums
- Interior of polling places: nonpublic forums
  - However, different answers for streets and sidewalks immediately adjacent to polling places
- Public hospitals: nonpublic forums
- Courthouses: nonpublic forums





# Common Places for First Amendment Audits

## POLICIES

- The First Amendment protects the act of recording government officials in public spaces
- filming will be allowed in those areas of your facility which are open to the general public
- Those who routinely interact with the public are subject to being confronted by these auditors- need to know how to handle these encounters
- Even if they are annoying or distracting-they cannot be unreasonably disruptive or prevent employee from completing their work
- Remember they are looking to instigate a confrontation and if they cannot provoke a reaction, they will likely go away
- Follow your office policies!

# Handling Auditors

- Your policy makers should “audit and harden” your facilities
- Designate and clearly mark nonpublic areas
  - Signs- “Restricted Access-Employees and invited guests only beyond this point”
  - On all potential ingress points- rear/side of building
  - Physical access controls- locked doors; key cards/controlled access
  - Obstruct views- blinds/window tint
- Don’t be triggered by profane phrases or writings on t-shirts or signs
- If you feel unsafe or threatened contact law enforcement, but as a last resort

# Handling Auditors

- You should receive training that includes such things as:
  - **Stay calm-Avoid confrontation-Do not provide the desired negative reaction or hostility**
  - Know where recording is and is not permitted and other applicable rules in facilities
  - Be familiar with the public and nonpublic areas of the workplace
  - Know who the designated person is to respond to an auditor
  - Anticipate the recording will be on the Internet – what you do will be there forever!
  - Provide simple, consistent instruction to the auditor
  - Do not debate or argue with the auditor
  - Expect to be interrupted, demeaned, antagonized
  - Do not restrict the auditor's activity in any way related to viewpoint
  - Don't touch them



# Importance of Appropriate Response

- Video will likely be posted on the Internet
- May attract attention from traditional media
- Official complaints against employees – may require you to conduct an investigation
- Lawsuits
  - Federal claims carry liability for attorney's fees and litigation expenses, too.
  - Be aware that in some circumstances claims can be brought against individuals



# KILL THEM WITH KINDNESS!!

Remember that they are often looking for a fight.

Don't give it to them!





# THANK YOU

William G. Warner and

Eric A. Krebs

850-784-7772

[erickrebs@warnerlaw.us](mailto:erickrebs@warnerlaw.us)